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The Emperor, the ex-prostitute, and the adulteress. Suet. Cal. 40 revisited

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MATER FAMILIAS

SCRITTI ROMANISTICI PER MARIA ZABŁOCKA

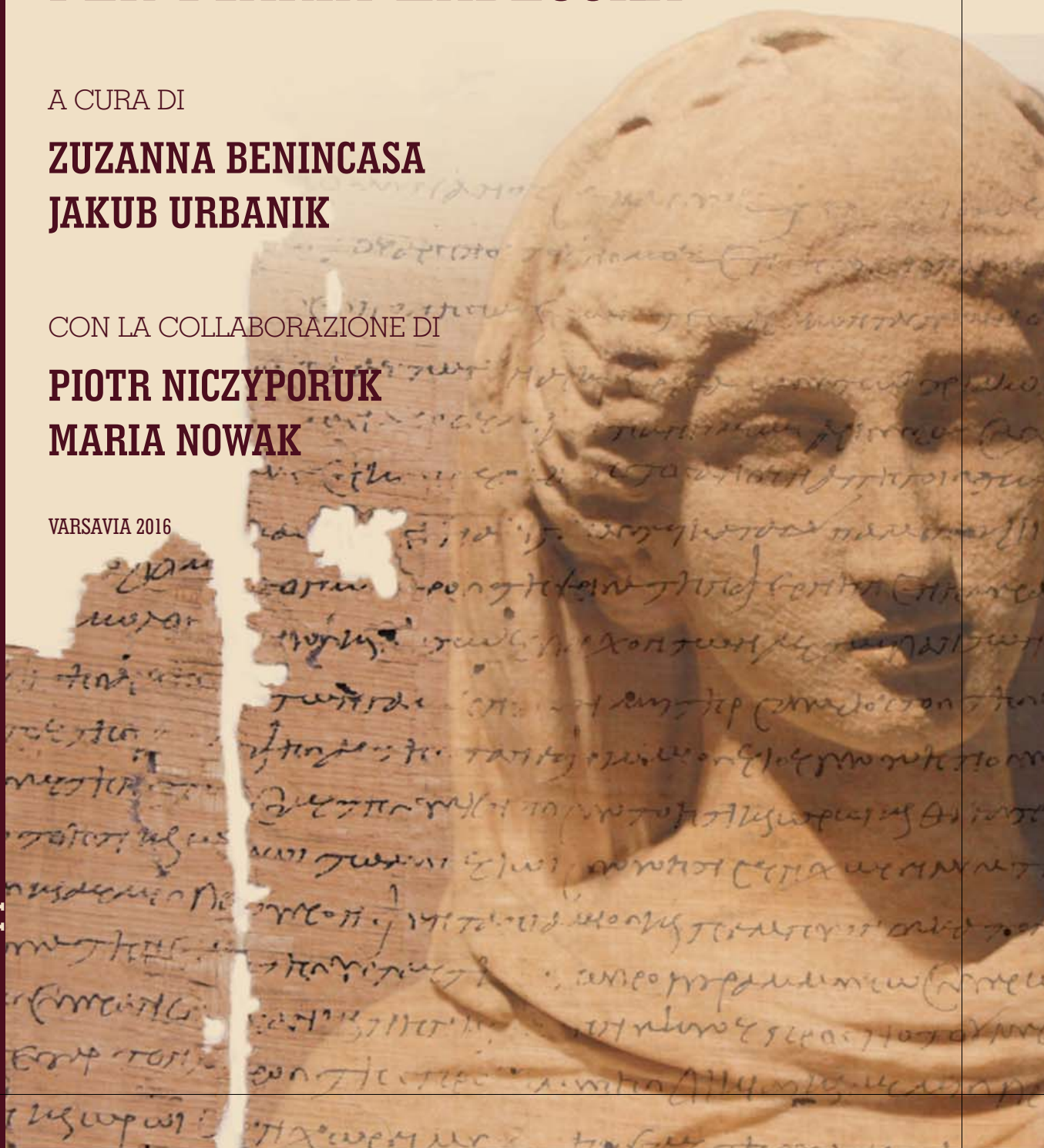
A CURA DI

ZUZANNA BENINCASA
JAKUB URBANIK

CON LA COLLABORAZIONE DI

PIOTR NICZYPORUK
MARIA NOWAK

VARSAVIA 2016



Mater Familias
Scritti per Maria Zabłocka

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José Luis Alonso

**THE EMPEROR, THE EX-PROSTITUTE,
AND THE ADULTERESS
SUET. CAL. 40 REVISITED**

THESE PAGES HAVE NO other purpose than showcasing the acumen and exemplary unpretentiousness of the scholar to whom they are dedicated. The central idea, born out of perplexity at the common interpretation of Suet. *Cal.* 40 *i.f.*, as one may find it in McGinn's 1998 classic work on prostitution and the law in Ancient Rome,¹ was first presented at a 2012 meeting in San Sebastián of the Leda network,² and then discussed in Warsaw, at the weekly Roman Law Seminar led by Maria Zabłocka with Witold Wołodkiewicz. Completing the apparatus in Warsaw before the seminar, I found that in her 1987 habilitation³ Prof. Zabłocka had come to the exact same conclusion that I defended: formulated in such a concise, sober and unassuming way, that neither McGinn, a decade later, nor anyone since, noticed its originality and

¹ Th. A. J. MCGINN, *Prostitution, Sexuality and the Law in Ancient Rome*, New York – Oxford 1998, pp. 249, 251 ad n. II.

² IV Encuentro de la Red de Estudios de Género y Tradición Jurídica Romana, San Sebastián-Bilbao, 26/27 Octubre 2012: Prostitución femenina en la experiencia histórico-jurídica.

³ Maria ZABŁOCKA, *Przemiany prawa osobowego i rodzinnego w ustawodawstwie dynastii julijsko-klaudyjskiej* [Changes in the Law of Persons and Family in the Julio-Claudian Legislation], Warszawa 1987, pp. 75–76.

importance. Despite the partial publication of her work in Italian,⁴ the old misguided interpretations continued to reign unchallenged. If this modest contribution serves to highlight how Zabłocka's insight solves a riddle that has hindered for centuries our understanding of Suetonius' text, it will have fulfilled its function.



I. SUETONIUS AND THE TAX

Our text, Suet. *Cal.* 40, is the inevitable point of departure for any study of the prostitution tax in the Roman Empire.⁵ It is worth reading it together with the successive § 41:

Vectigalia nova atque inaudita primum per publicanos, deinde, quia lucrum exuberabat, per centuriones tribunosque praetorianos exercuit, nullo rerum aut hominum genere omissa, cui non tributum aliquid imponeret. Pro edulibus, quae tota urbe venirent, certum statumque exigebatur; pro litibus ac iudiciis ubicumque conceptis quadragesima summae, de qua litigaretur, nec sine poena, si quis composuisse vel donasse negotium convinceretur; ex gerulorum diurnis quaestibus pars octava; ex capturis prostitutarum quantum quaeque uno concubitu mereret; additumque ad caput legis, ut tenerentur publico et quae meretricium quive lenocinium fecissent, nec non et matrimonia obnoxia essent. 41. Eius modi vectigalibus indictis neque propositis, cum per ignorantiam scripturae multa commissae fierent, tandem flagitante populo proposuit quidem

⁴ Maria ZABŁOCKA, 'Le Modifiche introdotte nelle leggi matrimoniali augustee sotto la dinastia Giulio-Claudia', *BIDR* 89 (1986), pp. 379–410, cf. pp. 407–408.

⁵ Cf., with MCGINN, *Prostitution* (cit. n. 1), pp. 248–287, revised version of Th. A. J. MCGINN, 'The taxation of Roman prostitutes', *Helios* 16 (1989), pp. 79–100, also A. SOKAŁA, *Meretrices i jej pozycja w prawie rzymskim* [The Standing of the meretrix in Roman Law], Toruń 1998, pp. 78–84. On the papyrological evidence (infra sub 'a'), S. L. WALLACE, *Taxation in Egypt from Augustus to Diocletian*, Princeton 1938, pp. 209–211, and R. S. BAGNALL, 'A trick a day to keep the tax man at bay? The prostitute tax in Roman Egypt', *BASP* 28 (1991), pp. 5–12 [= IDEM, *Hellenistic and Roman Egypt. Sources and Approaches*, Aldershot – Burlington 2006, nr. XVI].

legem, sed et minutissimis litteris et angustissimo loco, uti ne cui describere liceret. Ac ne quod non manubiarum genus experiretur, lupanar in Palatio constituit, districtisque et instructis pro loci dignitate compluribus cellis, in quibus matronae ingenuique starent, misit circum fora et basilicas nomenclatores ad invitandos ad libidinem iuvenes senesque; praebita advenientibus pecunia faenebris appositique qui nomina palam subnotarent, quasi adiuvantium Caesaris redditus. ...⁶

Suetonius brings up in § 40 the prostitution tax as the peak of Caligula's outrageous fiscal innovations – 'vectigalia nova atque inaudita' –,⁷ just as, in § 41, the opening of a brothel in the palace is the pinnacle of the emperor's exploration of new 'manubiarum genera'. At this point, Suetonius' Life of Caligula has turned into a full fledged exercise in character assassination, and declaredly so: § 22 opens, programmatically, with the

⁶ 'He levied new and unheard of taxes, at first through the publicans and then, because their profit was so great, through the centurions and tribunes of the praetorian guard; and there was no class of commodities or men on which he did not impose some form of tariff. On all eatables sold in any part of the city he levied a fixed and definite charge; on law-suits and legal processes begun anywhere, a fortieth part of the sum involved, providing a penalty in case anyone was found guilty of compromising or abandoning a suit; on the daily wages of porters, an eighth; on the earnings of prostitutes, as much as each received for one embrace; and a clause was added to this chapter of the law, providing that those who had ever been prostitutes or acted as panders should be liable to this public tax, and that even matrimony should not be exempt. (41) When taxes of this kind had been proclaimed, but not published in writing, inasmuch as many offences were committed through ignorance of the letter of the law, he at last, on the urgent demand of the people, had the law posted up, but in a very narrow place and in excessively small letters, to prevent the making of a copy. To leave no kind of plunder untried, he opened a brothel in his palace, setting apart a number of rooms and furnishing them to suit the grandeur of the place, where matrons and freeborn youths should stand exposed. Then he sent his pages about the fora and basilicas, to invite young men and old to enjoy themselves, lending money on interest to those who came and having clerks openly take down their names, as contributors to Caesar's revenues.' (J. C. ROLFE, *Loeb Classical Library*, 1913–1914.)

⁷ Cf. S. GÜNTHER, '*Vectigalia nervos esse rei publicae*': die indirekten Steuern in der Römischen Kaiserzeit von Augustus bis Diokletian, Wiesbaden 2008, pp. 155–161; IDEM, '*Res publica* oder *Res popularis*? Die Steuerpolitischen Maßnahmen des 'schlechten' Kaisers Nero zwischen Haushaltraison und Volksfreundlichkeit', [in:] CHRISTINE WALDE (ed.), *Neros Wirklichkeiten. Zur Rezeption einer umstrittenen Gestalt*, Rahden-Westfalen 2013, pp. 106–110.

words ‘hactenus quasi de principe, reliqua ut de monstro narranda sunt’. Yet, it goes without saying, a hostile narration can be built without falsities, through selection and presentation. How much credit does Suetonius deserve in our case?

Cassius Dio (LIX 28.8–9) does not have much value as confirmation:⁸ for all of Dio’s avowed research effort (ten years: LXXII 23.5), his version coincides in structure with Suetonius §§ 40–41 to such a point that one must assume the latter –or some common source– figured prominently in Dio’s mind when writing his own account.⁹ References to the tax are not very abundant in the literary record: leaving aside later mentions in the Byzantine and patristic literature,¹⁰ one finds the tax only in Josephus (*Ant. Jud.* XIX 28) and in the (problematic) life of Alexander Severus in the *Historia Augusta* (24.3).

⁸ Cassius Dio LIX 28.8–9, from the 11th cent. epitome of Joannes Xiphilinus and the fragmenta Valesiana (here in the canonical edition by U. Ph. BOISSEVAIN, II, Berlin 1895, pp. 656–657): οὗτος οὖν ὁ θεὸς καὶ οὗτος ὁ Ζεὺς (καὶ γὰρ ἐκαλεῖτο τὰ τελευταῖα οὕτως, ὥστε καὶ ἐς γράμματα φέρεσθαι) ταῦτά τε ἅμα ἔπραττε καὶ χρήματα αἰσχιστα καὶ δεινότατα συνελέγετο. ἵνα γὰρ τις τὰ τε ὄνια καὶ τὰ καπηλεία τὰς τε πόρναις καὶ τὰ δικαστήρια, τοὺς τε χειροτέχναις καὶ τὰ ἀνδράποδα τὰ μισθοφοροῦντα τὰ τε ἄλλα τὰ τοιαῦτα, ἐξ ὧν οὐδὲν ὅ τι οὐκ ἡργυρίζετο, παραλείπη, 9. ἀλλὰ τὰ γε οἰκήματα τὰ ἐν αὐτῷ τῷ παλατίῳ ἀποδειχθέντα, καὶ τὰς γυναῖκας τὰς τῶν πρώτων τοὺς τε παῖδας τοὺς τῶν σεμνοτάτων, οὓς ἐς αὐτὰ καθίζων ὑβρίζεν, ἐκκαρπούμενος ἐπ’ αὐτοῖς πάντας ἀπλῶς, τοὺς μὲν ἐθελοντάς τοὺς δὲ καὶ ἄκοντάς, ὅπως μὴ καὶ δυσχεραίνειν τι νομισθῶσι, πῶς ἂν τις σιωπήσειεν. – This god, now, this Jupiter (for he was called by these names so much at the last that they even found their way into documents) at the same time that he was doing all this was also collecting money in most shameful and dreadful ways. One might, indeed, pass over in silence the wares and the taverns, the prostitutes and the courts, the artisans and the wage-earning slaves, and other such sources, from which he collected every conceivable tribute; (9) but how could one keep silent about the rooms set apart in the very palace, and the wives of the foremost men as well as the children of the most aristocratic families that he shut up in those rooms and subjected to outrage, using them as a means of milking everybody alike? Some of those who thus contributed to his need did so willingly, but others very much against their will, lest they should be thought to be vexed. (E. Cary, *Loeb Classical Library*, 1924)

⁹ Dio’s use of Suetonius is a *vexata quaestio*: cf. already, markedly sceptical, E. SCHWARZ, s.v. ‘Cassius Dio Cocceianus’, *PWRE* III 2 (1899), coll. 1714–1715, favouring the hypothesis of common sources; in the opposite sense, F. MILLAR, *A study of Cassius Dio*, Oxford 1964, pp. 85–86.

¹⁰ Zosimus II 38; Iust., *Apol.* I 27; Tert. *Fuga* 13; Evag. *HE* III 39. Cf. ΣΟΚΛΑ, *Meretrix* (cit. n. 5), pp. 82–84.

More weight to Suetonius' report adds the ample evidence that prostitution was indeed taxed throughout the Empire:

a) The earliest evidence comes from a group of ostraka from Egypt referred to a τέλος ἐταιρικόν: three from Elephantine (*O. Wilck.* 1157, AD 111; *SB* VI 9545 nr. 33, AD 142; *SB* IV 7399, AD 144), where a prostitute curiously receives permission from the τελῶναι ἐταιρικόν, the farmers of the tax, to freely exercise her trade on a particular day;¹¹ also from Elephantine, a tax receipt (*O. Wilb.* 33, AD 188) issued by a μισθωτῆς χειρωναξίου μηνιαίου καὶ ἐταιρικοῦ, although to a male payer, and hence probably (unless he was a procurer) not for the ἐταιρικόν; and, finally, two receipts, again from Elephantine (*O. Wilck.* 83, AD 111) and from the Hermonthites (*O. Cair. GPW* 60, AD 170), issued by the τελῶναι ἐταιρικόν upon payment of the tax, for the modest amount of, respectively, one and four drachmas. The material was reviewed by Roger Bagnall in 1991.¹² Since his paper, yet another receipt has been published, again for four drachmas: *SB* XXII 15382,¹³ dated AD 65, from the Memnoneion in Thebes. This latter document brings the evidence much closer to Caligula's time. In the absence of further information, it seems futile to speculate that the tax may have been abolished (by Claudius, as Dio LX 4.1 tells us happened with many of Caligula's fiscal innovations, a cancellation which Suet. *Claud.* 11.3 expands 'unlikely' to all his official acts), and later reintroduced (i.e. by Nero). And, with all due caution, considering the general scarcity of material for the earliest Roman Egypt, the absence so far of any evidence for the reigns of Augustus and Tiberius (and for the whole

¹¹ This puzzling permission tends to be understood since Plaumann as related to festival days: cf. BAGNALL, 'A trick' (cit. n. 5), p. 6 and n. 5.

¹² BAGNALL, 'A trick' (cit. n. 5), pp. 5–12, partially as a refutation of MCGINN, 'Taxation' (cit. n. 5), pp. 79–110. For the problematic *O. Edfou* I 171 (= *CPJud.* 11 387, AD 164, Apollonopolis Magna) and *O. Elkab* 196 (1st–2nd cent. AD, Eileithyopolis), cf. BAGNALL, 'A Trick' (cit. n. 5), pp. 6–7; *ibid.* p. 8, for Wilcken's (and McGinn's) unwarranted assumption that *O. Wilck.* 504 (AD 112, Thebes) and *O. Wilck.* 1030 (AD 32, Thebes) refer to the ἐταιρικόν. Dubious also, and overlooked by both McGinn and Bagnall, the ἐταρίσματα (ἐταυρίσματα?) in *P. Grenf.* 11 41 (AD 46, Arsinoites), a sub-lease of the farming of a tax.

¹³ C. A. NELSON, 'Receipt for tax on prostitutes', *BASP* 32 (1995), pp. 23–33.

of the Ptolemaic period) speaks also in Suetonius' favour. It is remarkable that the documents appear so concentrated in Elephantine and the Theban area: maybe, as Bagnall suggested, because prostitution was elsewhere practiced in brothels run by public concession and taxed as a unit.¹⁴

b) The *Tax Law of Palmyra* (CIS II 3, 3913 = OGIS 629 = IGRR III 1056),¹⁵ issued by a decree of the city council dated AD 137, along lines that go back to the 1st century, is especially relevant. Its rate (III B 73–76),¹⁶ repeated (IV B) in the edict or epistula of a Gai[us ...]ianus (probably Gaius Licinius Mucianus, as legatus of Syria in 67–69),¹⁷ a denarius from the woman who charges a denarius or more, *i.e.* per service, less if she charges less,¹⁸ clearly echoes Suetonius' 'ex capturis prostitutarum quantum quaeque uno concubitu mereret', even if it does not lead to the same result when the price exceeds one denarius. Whether this was meant as a monthly rate, as most commonly assumed, or a daily one, as McGinn has insisted (connecting the phrase in Suetonius to the previous 'ex gerulo-

¹⁴ Cf., together with SB XVI 12695 (AD 143, Oxyrhynchos), l. 19, mentioned (as *P. Lond. inv.* 1562 verso) by BAGNALL, 'A Trick' (cit. n. 5), p. 9, n. 15, also PSI IX 1055 (AD 265, Arsinoites).

¹⁵ On the law, J. F. MATTHEWS, 'The Tax Law of Palmyra: Evidence for economic history in a city of the Roman East', *JRS* 74 (1984), pp. 157–180; D. R. HILLERS & E. CUSSINI, *Palmyrene Aramaic Texts*, Baltimore – London 1996, nr. 0259.

¹⁶ [Ὁ αὐτὸς δημ]οσι[ώνης τῶν ἐταιρῶν ὅσαι | δηνάριον ἢ πλεόν λαμβά]νουσιν, π[ράξει δηνάριον, | ὅσαι δὲ λαμβάνουσιν] ἀσσάρια ὀκτώ, [πράξει ἀσσάρι]α ἡ', [ὅσαι δὲ ἀ]σάρια ἕξ | ἔλ[αβον,] ἑ[κάστ(ης) ἀσσ(άρια)] σ'. The text, quite fragmentary, can be reconstructed with certainty from the Aramaic version, cf. DITTENBERGER, n. 48 *ad leg.*

¹⁷ Col. IV A, l. 123. The text goes on in the first person throughout this panel and IV B: the initial thirty lines of this panel are virtually lost, but the Aramaic version, in II C, ll. 26–29, refers yet again to the prostitution tax: cf. DITTENBERGER, nn. 48 and 131 *ad leg.*

¹⁸ Unlike most of the taxes in this text, ours does not seem to be mentioned here as *portorium*, but also or mainly, especially in III B 73–76, to the practice of the prostitution *in situ* (cf. the immediate ll. 78–80: παντοπωλεῖα σκυτικά and ἐργαστήρια, whether brothels or, as it seems likely from the context, workshops, both obviously referred to activities practiced in the city). To the *portorium* instead, and not to the general *vectigal* on prostitution refers, unmistakably, the Koptos tariff inscription (OGIS 674 = *Portes* 66 = *Prose* 59 = IGRR I 1183 = SB V 8904 = SEG 20.668), at the quite high rate of 108 drachmas: γυναικῶν πρὸς ἐταιρισ|μὸν δραχμὰς ἑκατὸν ὀκτώ (l. 17). Cf. DITTENBERGER, n. 15 *ad leg.*

rum diurnis quaestibus pars octava'), despite the quite incompatible evidence of the payments of one and four denarii in the Egyptian ostraka (*supra sub* 'a'), can be here left aside.¹⁹

c) A conflict regarding the amount and mode of exaction of the tax (involving the military, as in Suetonius) is attested for the time of Commodus in an inscription from Chersonesus Taurica (*CIL* III 13750 = *IosPE* I² 404 = *IGRR* I 860), that includes an Imperial *epistula* on the case (ll. 32–50).²⁰

d) Particularly valuable as evidence that this was indeed a general tax for the whole Empire is the imperial legislation that abolished it in Late Antiquity, most notably *NovTh.* 18.²¹

These sources prove beyond doubt the historicity of the tax, and, while they cannot be held as confirmation that it was introduced precisely by Caligula, they lend at least some credibility to Suetonius' account. At the same time, they show quite clearly how far Suetonius goes in his manipulation of the bare facts. These may be true in themselves, but they are disposed and presented as an indictment. In this, alongside political animosity,

¹⁹ Vigorously against McGinn, BAGNALL, 'A trick' (cit. n. 5), pp. 9–12; despite his objections, *cf.*, substantially unchanged, MCGINN, *Prostitution* (cit. n. 1), pp. 264–268, with further lit.

²⁰ *Cf.* TH. REINACH, 'Bulletin Épigraphique', *Revue des Études Grecques* 6 (1893), p. 284; F. F. ABBOTT and A. CH. JOHNSON, *Municipal Administration in the Roman Empire*, Princeton 1926, pp. 438–439. *Cf.* also the related *IosPE* I² 705 (Chersonesos, ca. AD 185–186), l. 2.

²¹ Imp. Theod(osius) et Valent(inianus) AA. Cyro p(raefecto) p(raetorio). '... Nam cum lenonum calliditate damnabili circumventam veterum videret incuriam, ut sub cuiusdam lustralis praestationis obtentu corrumpendi pudoris liceret exercere commercium, nec iniuriam sui ipsam quodammodo ignaram cohibere rem publicam, pio circa omnium verecundiam proposito mansuetudini nostrae amore pudicitiae castitatisque suggessit ad iniuriam nostrorum temporum pertinere, si aut lenones in hac liceret urbe versari aut eorum turpissimo quaestu aerarium videretur augeri. Ac licet nos illud adverteret execrari etiam cessante vicaria oblatione vectigal, tamen, ne ullum ad aerarium incommodum perveniret, propriam possessionem obtulit, ex cuius redditibus possit accedere, quod praedictum pessimum genus consueverat pensitare ...'. Dat. VIII Id. Dec. Constantinopoli Theod(osio) A. XVII et Festo cons. (AD 439). *Cf.* also Leo *CJ.* II.41.7, with *CJ.* I.4.14 (AD 457–467).

artistic necessity played a role. The *Lives* are organised thematically, not chronologically. Each action, each fact, illustrates an aspect, positive or negative, of the character of an emperor and his rule. In itself, this literary choice drastically impairs Suetonius' chances at objectivity: it imposes a systematic manichaeism, and turns the *Lives* into catalogues of the extreme good and the extreme evil that absolute power enables.

At this point we are in the realm of extreme evil. Suetonius wishes to scandalise with his list of expenses and taxes, and he goes out of his way to present them as unprecedented and unconceivable. The list of new taxes is preceded (§ 37) by the report that the emperor's extravagant expenses had exhausted the immense reserve left by Tiberius – Caligula would have squandered 2.700 million sesterces in one year –, and followed by the *chronique scandaleuse* of the brothel that the emperor opened in his own palace, offering the wives and sons of the Roman nobility as prostitutes at a high price, lending money to the clients, and claiming the tax.

Nothing of this allows us to conclude that these taxes were seen by the people and the senate as a sign of the tyrant and the madman.²² That it was almost certainly not thus is to be suspected, if the tax survived four centuries, until Theodosius II sacrificed the revenue to the Christian morals and decreed its abolition.



II. THE PROBLEM

These pages are devoted to the end of § 40, and the remarkable way in which it has been understood:

ex gerulorum diurnis quaestibus pars octava; ex capturis prostitutarum quantum quaeque uno concubitu mereret; additumque ad caput legis, ut tenerentur publico et quae meretricium quive lenocinium fecissent, nec non et matrimonia obnoxia essent.

²² On the widespread hypothesis of Greek and Hellenistic (or specifically Ptolemaic) precedents, and in general on the motives for the introduction of the tax, cf. MCGINN, *Prostitution* (cit. n. 1), pp. 250–256, with lit. Critical, BAGNALL, 'A trick' (cit. n. 5), pp. 5–9.

Let McGinn's translation (*cf.* Rolfe's, *supra*, n. 6) serve as example of how these lines are commonly interpreted:

From the daily earnings of porters, one-eighth was required, and from those of the prostitutes, the amount each earned for one act of sexual intercourse. And a clause was added to this chapter of the law, providing that even those who had (in the past) practiced prostitution or pimping were liable to the treasury (for the tax) and that married persons were subject to it as well.

These lines matter to McGinn mainly in his effort to determine the rate of the tax (monthly or daily). There is a much more remarkable aspect of his translation on which he does not spend another word: the puzzling reference to those who in the past have been prostitutes or pimps, and to those who are married.

The phrase 'nec matrimonia obnoxia essent' has long been, in fact, a *crux* that practically every edition of the *Lives* has tried to account for, with scarce fortune. One of the major commentaries in German, by Detlev Karl Wilhelm Baumgarten-Crusius, published in three volumes in Leipzig in 1818, explains:

matr. obnoxia essent] h.e. annum vectigal penderent, veluti pro usu uxoris et dotis, quam marito attulissent, ut recte interpretatur Ernest. – Burm. semel tanto in conjugii initio, et ab illis, qui primum uxores ducerent, exactum illud existimat.

For Baumgarten-Crusius, marriages were taxed (per year, he suggests) for the use of the wife and the dowry, as already understood by Johann August Ernesti in his edition of 1748. Pieter Burman, instead, in his commented edition of 1736, had understood the tax as paid once only, upon marriage, and only by those who are the first to marry their wives, *i.e.* when it was for these their first wedding.

More peculiar yet is an interpretation, common since the Humanists, that refers the tax to the *ius primae noctis* of the feudal lord, and to the custom of leaving some money to the husband. The practice was understood (*e.g.* by Marcus Boethius, in his 1632 Leyden edition), as a pre-Christian

remnant, and Caligula would have taxed this so-called *vectigal marchetae mulieris* received by the husband.²³

More recent editions tend to understand the marriage reference in the sense that prostitutes and procurers were taxed regardless of their marital status.²⁴ This interpretation, less fantastic as it may seem to our sensibility, is equally implausible. It is true that, since the *leges Iulia et Papia* at least, prostitutes could marry anyone except members of the senatorial class,²⁵ but one fails to understand why Caligula's law would have deemed it necessary to specify that marriage does not touch the duty to pay the tax.

Equally baffling is the extension of the tax to those who in the past have practiced prostitution and pimping. This interpretation is common to most nineteenth and twentieth century translations. Thus, for instance, J. C. Rolfe's, in the *Loeb Classical Library*:

... on the earnings of prostitutes, as much as each received for one embrace; and a clause was added to this chapter of the law, providing that those who had ever been prostitutes or acted as panders should be liable to this public tax, and that even matrimony should not be exempt.

This reading tries to solve what otherwise would seem an inexplicably redundant addition to the law: if the law taxed prostitutes 'in quantum quaeque uno concubitu mereret', what would an addition mean whereby 'tenerentur publico et quae meretricium quive lenocinium fecissent'? The

²³ Adolf STAHR, in his 1857 Stuttgart edition, translates: 'Ein Zusatzartikel zu dem Gesetze besagte, daß auch die ehemaligen Buhlerinnen und Kupplerinnen dem Fiskus pflichtig, sowie daß auch die Ehen gleichfalls unter dem Gesetze begriffen sein sollten.' And in n. 1 comments: 'Der alte Ostertag bemerkt hierbei: 'Das *fus primae noctis*, welches sich in einigen nördlichen Provinzen Deutschlands und Frankreichs die Gutsbesitzer bei ihrer Unterthanen Töchtern angemaßt, traten sie gewöhnlich and den Bräutigam gegen Kriegung einer gewissen Geldsumme ab, die *vectigal marchetae mulieris*, d.i. der Jungfer-schaftszoll, genannt ward. Caligula also hatte schon diesen kameralistischen Einfall.'

²⁴ The same assumption, in A. A. BARRETT, *Caligula. The Corruption of Power*, London – New York 1989, p. 228: 'to prevent evasion of this last measure, a tax was placed on pimps and on prostitutes who married'.

²⁵ With ample discussion and lit., MCGINN, *Prostitution* (cit. n. 5), pp. 85–104.

answer is sought in the *consecutio temporum* between *fecissent* and *tenerentur*. The interpretation goes back to the Humanists: it can already be found in the late fifteenth century commentary of Filippo Beroaldo.²⁶

Prima facie, the idea of subjecting a former prostitute to the tax as if she still practised her former trade might seem consistent with the jurisprudential interpretation of the Augustan legislation. In his commentary to *leges Iulia et Papia*, in fact, Ulpian writes the following:

D. 23.2.43.4 (Ulp. 1 *Iul. Pap.*): Non solum autem ea quae facit, verum ea quoque quae fecit, etsi facere desiit, lege notatur: neque enim aboletur turpitudinis, quae postea intermissa est.

This extension of the legal condition of the prostitutes to those who have practiced prostitution in the past was quite likely part of the Augustan marriage legislation: McGinn argues, with good reasons,²⁷ that the condition of a prostitute was defined by the Augustan laws as that of ‘qui quaeve palam corpore quaestum facit fecerit’.

Yet, it is one thing that the turpitudinis associated with prostitution was indelible regarding the Augustan marriage laws, and a very different one that an activity which was no longer practised could nevertheless be taxed. Even from a practical point of view, the exaction of such tax seems hardly workable, if there was no *quaestus*, no possible basis for the calculation of the tax.

This is not the only question left without an answer by the interpretation we are discussing. In Suetonius, the issue of marriage arises in connection to those ‘quae meretricium quive lenocinium fecissent’: what can that connection be, if we understand these as former prostitutes and pro-

²⁶ Ph. BEROALDUS, *Vitae Caesarum*, Bologna 1493: ‘Meretricium fecissent: absolute meretricium appellat artem meretriciam: et enim voluit eas quoque obnoxias esse legi quae olim meretricium quaestum exercuissent’. In the same sense, J. GRUTER, *Historiae Augustae Scriptores Latini Minores* I, Hannover 1611: ‘Et qui lenocinium fecissent] Pal. sec. ac tert. quive lenocinium fecissent, non male. Interim notandum publico obligare Caligulam, qui desiissent facere artem illam inertem. hoc enim indicare videtur vox *fecissent*. Esse autem contra rationem, ut lex statuatur in praeteritum, nemini non notum.’ Cf. BURMAN’s 1786 edition *ad loc.*

²⁷ MCGINN, *Prostitution* (cit. n. 5), pp. 99–102.

curers? Certainly not the assumption that only these would be married, since nothing prevented the marriage of those still involved in prostitution. More remarkably: this interpretation leaves no reference whatsoever to those who act as procurers in the present, only to those who did in the past; what might the explanation for that be?

This whole set of problems arise from Suetonius' claimed 'addition' to the *caput legis*. If the law taxed the practice of prostitution, what may have been the object of such addition?



III. SUETONIUS' ACCURACY

One might feel tempted to eschew the trouble by questioning Suetonius' accuracy in paraphrasing the law. After all, he had no particular legal expertise; his intention was at this point openly derogatory; and his *Lives* have generally been dismissed as *chronique scandaleuse* rather than the work of a true historian. Also his access to the sources has been questioned, for the lives that come after those of Caesar and Augustus: they are, in fact, much shorter than these first two, and mention fewer primary sources, like letters and legislation. The standard explanation for this contrast is built on a fragment from Hadrian's life in the *Historia Augusta*, according to which Suetonius had been *ab epistulis* until dismissed by Hadrian together with Septicius Clarus²⁸ – who, as we know through Johannes Lydus,²⁹ would be the dedicatee of the *Lives*.

²⁸ *Hadr.* 11.3: 'Septicio Claro praefecto praetorii et Suetonio Tranquillo epistularum magistro multisque aliis, quod apud Sabinam uxorem iniussu eius familiaris se tunc egerant quam reverentia domus aulicae postulabat, successores dedit, uxorem etiam ut morosam et asperam dimissurus, ut ipse dicebat, si privatus fuisset.'

²⁹ *Lyd. Magistr.* 11 6: *Τράγκυλλος τοίνυν τοὺς τῶν Καيسάρων βίους ἐν γράμμασιν ἀποτίνων Σεπτικίῳ, ὃς ἦν ὑπαρχος τῶν πραιτωριανῶν σπειρῶν ἐπὶ αὐτοῦ, πραιφεκτον αὐτὸν τῶν πραιτωριανῶν ταγμάτων καὶ φαλάγγων ἡγεμόνα τυγχάνειν ἐδήλωσεν.* (ed. R. WUENSCH, Leipzig 1903).

The *Historia Augusta* may be notoriously unreliable, but this time its account has found unexpected support in the epigraphic record: in 1952, Erwan Marec and Hans-Georg Pflaum published a new inscription from the forum of Hippo Regius:³⁰

C(aio) Suetoni[o] | [. fil(io) ... (tribu)] Tra[nquillo] | [f]lami[ni -ca. 10-] |
[adlecto i]nt[er selectos a di]vo Tr[a]n[iano Parthico p]on[t(ifici)]
Volca[nal]i | [-ca. 16- a] studiis a byblio[thecis] | [ab e]pistulis | [Imp(era-
toris) Caes(aris) Trai]ani Hadr[i]an[i Aug(usti) Hipponenses Re]lgii d(ecre-
to) d(ecurionum) p(ecunia) p(ublica).³¹

Tying the *HA* report of Suetonius' dismissal to the unbalance between the first two *Lives* and the rest, the common conjecture goes that Suetonius lost his position after finishing those first two, so that all the others, including ours, had to be written without the access to the Imperial archives he had previously enjoyed.

The conjecture is extremely fragile, though, and with good reason increasingly discredited. It postulates, unwarrantedly, that the *Lives* were written chronologically, that Suetonius' dismissal took place precisely after the second was completed, that the quotations in the initial two required privileged access to the archives. The truth is that, even accepting the historicity of Suetonius' dismissal, we do not know when it happened, or, for that matter, when the *Lives* were written and in which order. Furthermore, it is far from obvious that the sources quoted in the first two were accessible only through the Imperial archives: Augustus' letters, for instance, may well have been published. Finally: in the remaining *Lives*, source quotations may be relatively scarce, but they are not inexistent; thus, in Suetonius' ample discussion of Gaius' birth, he quotes

³⁰ E. MAREC & H.-G. PFLAUM, 'Nouvelle inscription sur la carrière de Suétone, l'historien', *Comptes rendus des séances de l'Académie des inscriptions et Belles-Lettres* 96 (1952), pp. 76–85.

³¹ 'The people of Hippo Regius, by decree of the decurions and with public money, to Gaius Suetonius Tranquillus ... son of ..., flamen, selected among the jurors by the divine Trajan Parthicus, pontiff of Volcan, a studiis, a bibliothecis, ab epistulis of the emperor Caesar Trajan Hadrian Augustus.'

a letter of Augustus (*Cal.* 8.4), and claims (8.2) to have consulted the *acta*, *i.e.* presumably the *acta diurna*³² (which, in any case, were public since Caesar, in Suetonius' own account: *Iul.* 20).³³

As for Suetonius' accuracy: within a Latin historiography that paraphrases its sources with the largest freedom, subordinating accuracy to literary force and unity of style, Suetonius is notorious precisely for being 'largely content with current usage, and not averse even from mongrelized words and official terminology'; 'unconcerned about unity of texture, he can dispense with the art of paraphrase and admit, without embarrassment, any quotations large or small, including Greek'.³⁴



IV. A CONJECTURE

There is, in sum, no easy way out. An explanation must be found for a law that, beyond demanding 'ex capturis prostitutarum quantum quaeque uno concubitu mereret', established, additionally, 'ut tenerentur publico et quae meretricium quive lenocinium fecissent, nec non et matrimonia obnoxia essent'.

There is no doubt that the pluperfect *fecissent* stands in a relation of anteriority with the imperfect *mereret* and *tenerentur*. Yet, if one pays attention to the nuance of Suetonius' phrasing, the difference between

³² F. SCHULZ, 'Roman Registers of Births and Birth Certificates', *JRS* 32 (1942), pp. 78–91, and *JRS* 33 (1943), pp. 55–64, conjectures instead a registry of birth preserved in the Aerarium Saturni.

³³ On Caesar's innovation, B. CROKE, 'City Chronicles of Late Antiquity', in G. CLARK (ed.), *Reading the Past in Late Antiquity*, Sydney 1990, p. 171; P. WHITE, 'Julius Caesar and the Publication of *Acta* in Late Republican Rome', *Chiron* 27 (1997), pp. 73–84. On the *acta*, B. BALDWIN, 'The *acta diurna*', *Chiron* 9 (1979), pp. 189–203, and A. LINTOTT, '*Acta antiquissima*: A week in the history of the Roman Republic', *Papers of the British School at Rome* 54 (1986), pp. 213–228.

³⁴ F. D. R. GOODYEAR, 'History and biography', [in:] E. J. KENNEY, *The Cambridge History of Classical Literature* II. *Latin Literature*, Cambridge 1982, p. 662.

those ‘quae meretricium quive lenocinium fecissent’ and the prostitutes initially taxed seems to be not merely temporal. The addition, in fact, seems referred: (a) to anyone who incurred in *lenocinium*, being or not a *leno*; (b) to anyone who incurred in *meretricium* even without being a prostitute.

As far as ‘a’ is concerned: additionally subjected to the tax are, first and foremost, the *lenones*,³⁵ but also anyone who, without being a *leno*, may have incurred in *lenocinium*. This includes, most importantly, by virtue of the *lex Iulia de adulteriis*, the husband of the adulteress, when he benefits from the adultery, and also if he fails to act as is proper against the adulterers, repudiating the wife, and either killing or presenting criminal accusation against her accomplice. A key source in this respect is a fragment from Ulpian’s *de adulteriis*:³⁶

D. 48.5.30(29) (Ulp. 4 *adult.*): Mariti lenocinium lex coercuit, qui deprehensam uxorem in adulterio retinuit adulterumque dimisit: debuit enim uxori quoque irasci, quae matrimonium eius violavit. tunc autem puniendus est maritus, cum excusare ignorantiam suam non potest vel adumbrare patientiam praetextu incredibilitatis: idcirco enim lex ita locuta est ‘adulterum in domo deprehensum dimiserit’, quod voluerit in ipsa turpitudine prehendentem maritum coercere. 1. Quod ait lex, adulterii damnatam si quis duxerit uxorem, ea lege teneri, an et ad stuprum referatur, videamus: quod magis est. certe si ob aliam causam ea lege sit condemnata, impune uxor ducetur. 2. Plectitur et qui pretium pro comperto stupro acceperit: nec interest, utrum maritus sit qui acceperit and alius quilibet: quicumque enim ob conscientiam stupri accepit aliquid, poena erit plectendus. ceterum si gratis quis remisit, ad legem non pertinet. 3. Qui quaestum ex adulterio uxoris suae fecerit, plectitur: nec enim mediocriter deliquit, qui lenocinium in uxore exercuit. 4. Quaestum autem ex adulterio uxoris

³⁵ Of either sex, cf. Ulp. 1 *Iul Pap. D.* 23.2.43.6–9. Suetonius says nothing about the rate: following the logic of the main caput of the law, this may have been the price of one *concubitus* for each of the *leno*’s prostitutes. MCGINN, *Prostitution* (cit. n. 1), p. 266 and n. 129, understands the *lenocinium* addition rather in the sense that procurers were often the payers of the tax instead of ‘their’ prostitutes: this seems likely in the case of slaves, but an unwarranted assumption in that of a free prostitute.

³⁶ On the text, and in general on the question of the *lenocinium mariti*, MCGINN, *Prostitution* (cit. n. 1), pp. 220–245; G. RIZZELLI, *Lex Iulia de adulteriis*, Lecce 1997, pp. 123–170.

facere videtur, qui quid accepit, ut adulteretur uxor: sive enim saepius sive semel accepit, non est eximendus: quaestum enim de adulterio uxoris facere proprie ille existimandus est, qui aliquid accepit, ut uxorem pateretur adulterari meretricio quodam genere. quod si patiatur uxorem delinquere non ob quaestum, sed negligentiam vel culpam vel quandam patientiam vel nimiam credulitatem, extra legem positus videtur.

Ulpian's catalogue comprises five cases: (a) the husband who, having surprised the adulterers,³⁷ retains his wife ('uxorem retinere': *pr.*) instead of repudiating her,³⁸ or (b) lets her accomplice go ('adulterum dimittere': *pr.*), *i.e.*, fails to make use of his right to either kill him or retain him until witnesses are summoned for the future criminal accusation,³⁹ (c) whoever marries a woman convicted of adultery ('damnatam uxorem ducere': § 1);⁴⁰ (d) the husband who accepts (for himself or anyone else) a compensation for the affront he has suffered ('pretium pro comperto stupro accipere': § 2),⁴¹

³⁷ *Deprehendere* was here understood as *in ipsa turpitudine*, cf. *D.* 48.5.30(29) *pr.*, and Ulp. 1 *adult.* *D.* 48.5.24(23) *pr.*

³⁸ Cf. also Ulp. 8 *disp.* *D.* 48.5.2.2, and, on the husband who remarries the same wife, Marci. 1 *iud. publ.* *D.* 48.5.34(33)1, and Paul. 19 *resp.* *D.* 48.5.41(40).1; such a case is attested in Suet. *Dom.* 8.3. Mere suspicion is not enough to make the husband reus of *lenocinium*, if she has not been caught in the act: Sev. Ant. *Cf.* 9.9.2 (AD 199). If she is, *PSent.* 2.26.6 = *Coll.* 4.12.7, prescribe immediate repudiation. Repudiation certainly needed to be immediate when the husband had made use of his right to kill the wife's accomplice, cf. *PSent.* 2.26.6 = *Coll.* 4.12.5, Macr. 1 *publ.* *D.* 48.5.25(24).1: otherwise, the killing would not be impune, cf. Paul. *sing. adult.* *Coll.* 4.3.5. The rule imposing the repudiation of the adulteress implied also that, in order to accuse a woman of adultery *constante matrimonio*, her husband had to be accused of *lenocinium*: Ulp. 3 *disp.* *D.* 48.5.27(26) *pr.* For the general exclusion of the accusation *constante matrimonio*, Pap. *ls. adult.* *D.* 48.5.12(11).10.

³⁹ On the right to retain the adulterer (up to twenty hours) 'testandae eius rei causa', Ulp. 2 *adult.* *D.* 48.5.26(25); *PSent.* 2.26.3. Both this right and the *ius occidendi* are limited to the adulterer surprised in flagrante in the husband's house: hence the law's 'adulterum in domo deprehensum dimiserit'. On the question, RIZZELLI, *Lex Iulia* (cit. n. 36), p. 130.

⁴⁰ Cf. already Quint. *Inst.* 10.47. *Vid.* also Alex. *Cf.* 9.9.9 (AD 224), Val. Gall. *Cf.* 9.9.17 (AD 258), and the case in Pap. *sing. adult.* *D.* 48.5.30(29).13. The crime required knowledge: cf. *sciens* in Tryph. 3 *disp.* *D.* 4.4.37.1 (*infra*, in text).

⁴¹ On the use here of 'stuprum', RIZZELLI, *Lex Iulia* (cit. n. 36), p. 134–135. A case, in Alex. *Cf.* 9.9.10 (AD 225). On the problematic Diocl. *Cf.* 2.4.18 (AD 293), F. WIEACKER,

as well as anyone who does the same,⁴² or who mediates in such arrangement;⁴³ and, finally, as the most literal instance of marital *lenocinium*, (e) the husband who is paid to allow the adultery ('quaestum facere': §§ 3–4).⁴⁴ To Ulpian's list, yet a sixth case is usually added, often mentioned in our sources together with the others:⁴⁵ (f) that of whoever provides a home so that adultery or *stuprum* is committed.⁴⁶

An almost identical list, that omits 'b' and includes 'f', in Tryph. 3 *disput. D.* 4.4.37.1:

... Sed ut ad legis Iuliae de adulteriis coercendis praecepta veniamus,
utique nulla deprecatio adulterii poenae est, si se minor annis adulterum

'Öffentliche Strafe und Entschädigung des Opfers im römischen Kaiserrecht', [in:] *Estudios Juan Iglesias* 1, Madrid 1988, pp. 543–563. Aggravated penalty, of *missio ignominiosa* and deportation, against the soldier: Pap. *l.s. adult. D.* 48.5.12(11) *pr.* It has been suggested that *lenocinium* was committed only by the husband who, for a price, surrenders his right to kill or prosecute the adulterer, *i.e.* only when the adulterers have been surprised in flagrante: as MCGINN, *Prostitution* (cit. n. 1), p. 226, underlines, such narrow interpretation does not seem compatible with Ulpian's 'quicumque enim ob conscientiam stupri accepit aliquid, poena erit plectendus'.

⁴² Cf., together with Ulpian's 'nec interest, utrum maritus sit qui acceperit and alius quilibet', Pap. 2 *adult. D.* 48.5.11(10).1.

⁴³ Scaev. 4 *reg. D.* 48.5.15(14) *pr.* In the same sense, Macer 1 *publ. iud. D.* 48.5.33(32).1 *i.f.*, 'qui... consilio fuit, ut crimen redimeretur'.

⁴⁴ A case, in Diocl. *Cf.* 4.7.5 (AD 294). Both this and the previous hypothesis seem comprehended under 'qui de adulterio uxoris suae quid cepit', in Ulp. 8 *disp. D.* 48.5.2.2.

⁴⁵ Paul. 1 *adult. D.* 48.2.3.3; Pap. 2 *adult. D.* 48.5.9(8) *pr.*; Macer. 1 *publ. iud. D.* 48.5.33(32).1.

⁴⁶ Against the qualification of this hypothesis as *lenocinium* would *prima facie* seem to weigh Ulp. 4 *adult. D.* 48.5.30(29).6: 'Hoc quinquennium observari legislator voluit, si reo vel reae stuprum adulterium vel lenocinium obiciatur. quid ergo, si aliud crimen sit quod obiciatur, quod ex lege Iulia descendit, ut sunt qui domum suam stupri causa praebuerunt et alii similes? et melius est dicere omnibus admissis ex lege Iulia venientibus quinquennium esse praestitutum'. RIZZELLI, *Lex Iulia* (cit. n. 36), pp. 142–160, sees here, rather than a crime typified by the *lex Iulia* itself as different from *lenocinium*, merely a hypothesis that the law itself did not contemplate and came to be considered yet another case of *lenocinium* by virtue of jurisprudential interpretation. Ulpian's quite deliberate phrasing – 'omnibus admissis ex lege Iulia venientibus' – seems an argument in this sense. MCGINN, *Prostitution* (cit. n. 1), pp. 240–243, imagines instead that the jurisprudential interpretation merely came to consider as *lenocinium* an offense that the law had typified, without qualifying it as such.

fateatur. dixi, nec si quid eorum commiserit, quae pro adulterio eadem lex punit, veluti si adulterii damnatam sciens uxorem duxerit, aut in adulterio deprehensam uxorem non dimiserit, quaestumve de adulterio uxoris fecerit, pretiumve pro comperto stupro acceperit, aut domum praebuerit ad stuprum adulteriumve in eam committendum ...⁴⁷

As it has often been observed, the legislative equation of the complaisant husband to a procurer implies that of the adulteress to a prostitute.⁴⁸ This latter equation, all too natural in societies that stigmatise female sexual promiscuity, becomes explicit in Ulpian's text for the case that most closely resembles that of a *leno* and a prostitute, namely the husband who allows the adultery for a price: a *quaestum facere* that transforms his wife 'ex adultera in quaestuariam', paraphrasing Seneca's characterisation of Augustus' daughter (Sen. *Ben.* vi 32.1). For this case, we read in § 4 (albeit in a somewhat redundant clause not free from suspicion):⁴⁹ 'quaestum enim de adulterio uxoris facere proprie ille existimandus est, qui aliquid acceperit, *ut uxorem pateretur adulterari meretricio quodam genere.*' Disputed as it is which of these behaviours were *lenocinium* in the *lex Iulia* and which came to be considered as such through jurisprudential interpretation,⁵⁰ nobody doubts that *quaestum facere* was among the origi-

⁴⁷ On the wider problems posed by the text, RIZZELLI, *Lex Iulia* (cit. n. 36), pp. 43–49.

⁴⁸ MCGINN, *Prostitution* (cit. n. 1), p. 147, and, at length, pp. 156–171: 'the Adultera as Prostitute'. Cf. also G. RIZZELLI, 'Adulterium. Immagini, etica, diritto', [in:] F. MILAZZO (ed.), *Ubi tu Gaius. Modelli familiari, pratiche sociali e diritti delle persone nell'età del principato*, Milano 2014, pp. 209, 210 n. 121, *passim*. The exemption of prostitutes from the *crimina* of the *lex Iulia* reinforced the equation, leading to cases like that of Vistilia (Tac. *Ann.* 11 85.1–3, cf. MCGINN, *Prostitution* [cit. n. 1], pp. 216–219), who famously attempted to avoid an accusation of adultery by registering with the aediles as a prostitute (on this register, Th. A. J. MCGINN, 'The SC from Larinum and the Repression of Adultery at Rome', *ZPE* 93 [1992], pp. 281–284; MCGINN, *Prostitution* [cit. n. 1], pp. 201, with lit.), giving occasion to an AD 19 *senatusconsultum*: Suet. *Tib.* 35.2, and Pap. 2 *adult. D.* 48.5.11(10).2. On this *senatusconsultum* (or *senatusconsulta*) and the Larinum tablet: ZABŁOCKA, *Modifiche* (cit. n. 4), pp. 402–407; MCGINN, 'SC from Larinum' (cit. *supra*), pp. 273–295.

⁴⁹ Lit. in RIZZELLI, *Lex Iulia* (cit. n. 36), p. 139 n.57.

⁵⁰ On the question, cf., quite diversely, RIZZELLI, *Lex Iulia* (cit. n. 36), pp. 123–170, and IDEM, 'Il crimen lenocinii', *AG* 210 (1990), pp. 457–495, on one hand, and, on the other, MCGINN, *Prostitution* (cit. n. 1), pp. 171–194, with lit.

nal ones.⁵¹ A case, therefore, considered *lenocinium* (and, indirectly, *meretricium*) since the *lex Iulia* itself, and one that implied a *quaestus*. Subjecting this *quaestus* to the prostitution tax may seem shocking, but this additional humiliation is also consistent with the qualification of the husband's behaviour as *lenocinium*. Since this *quaestus* comes from a case of *lenocinium* – and *meretricium* – facere, rather than from a prostitute in the legal sense,⁵² one would expect it to be mentioned explicitly in the provision that introduced the tax. That it was indeed mentioned seems to me confirmed by Suetonius' 'nec matrimonia obnoxia essent'.

This is, in sum, I believe, the most sensible interpretation of the additions to the *caput legis* in Suetonius' account: together with prostitutes, any profit from *lenocinium* or *meretricium* was taxed, including that of the husbands who benefitted from their wives' adultery. So much was already, unassumingly, understood by Maria Zabłocka in her 1986 work on the Julio-Claudian legislation supplementing the Augustan marriage laws, where she prefers to refer 'caput legis', rather than to Caligula's own tax law, to the *lex Iulia de adulteriis*.⁵³

As the text shows, he (Caligula) taxed not merely the earnings of the prostitutes: he also modified a statute – namely, the *lex Iulia de adulteriis*,

⁵¹ Regarding 'pretium pro comperto stupro accipere', cf. the contrasting opinions in MCGINN, *Prostitution* (cit. n. 1), pp. 173–176, and RIZZELLI, *Lex Iulia* (cit. n. 36), pp. 134–138.

⁵² For the legal definition of the prostitute, *ex lege Iulia et Papia*, as 'qui quaeve palam corpore quaestum facit fecerit', cf. MCGINN, *Prostitution* (cit. n. 1), pp. 99–102. 'Palam' is here critical, making it quite difficult to qualify the adulteress as prostitute in the legal sense, despite the many aspects in which she may have been equated to one (*supra*, n. 48).

⁵³ ZABŁOCKA, 'Modifiche' (cit. n. 4), pp. 407–408: 'Come si evince da questo passo, non ci si limitò a tassare i redditi delle prostitute, ma si modificò altresì una legge – che sarebbe la *lex Iulia de adulteriis* – onde prelevare imposte sui redditi delle meretrici e dei lenone nonché delle persone sposate ree di meretricio, cioè quelle persone che conformemente alla *lex Iulia de adulteriis* fossero colpevoli di lenocinio.' A precedent of this interpretation I can find only, *in nuce*, in BEROALDUS' 1493 edition (cit. n. 26): 'Matrimonia obnoxia: nuptas quae adulteranter quaeque pudicitiam prostituerent voluit esse obnoxias de prostitutis penaeque obligatas ob adulterium ut ita tantundem solverent quantum prostitutae solvebant'. BEROALDUS' brilliant intuition, though, lacks any connection to the *lenocinium mariti ex lege Iulia de adulteriis*. Cf. also Philemon HOLLAND's 1606 translation, *ad loc.*

in order to tax the profits of the prostitutes and the procurers, as well as those of married people who had incurred in meretricium, that is, of those who according to the lex Iulia de adulteriis were guilty of lenocinium.

Let these pages serve to highlight the unpretentious discernment of our honouree, and to give to her insight the visibility it deserves.

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